

Mr. McCAUL of Texas. I thank the gentleman for yielding.

Madam Speaker, our most solemn duty in the United States Congress is to protect the American people; and while this bill may be well intentioned, it fails to do that. In fact, just the opposite. It puts the American people in great danger.

Before running for Congress, I worked in the Justice Department. I worked on national security, wiretaps or FISAs. The intention of the FISA Act was never to apply to agents of a foreign power in a foreign country. It was to apply to agents of a foreign power in this country. This bill does just the opposite. It expands it to bar a collection of foreign intelligence on foreign targets in foreign countries.

FISA is a cumbersome and time-consuming process. I am concerned that if we cannot collect intelligence overseas that we cannot protect our war fighter in the battlefield. We put them in danger, and we put the citizens of this country in danger.

We all know that al Qaeda is looking at hitting us again. It may be very soon. And with the anniversary of 9/11 approaching, we must do everything we can to protect her.

Mr. CONYERS. Madam Speaker, I am happy to yield to the Chair of the Immigration subcommittee in the House of Representatives Judiciary Committee, ZOE LOFGREN of California, 1 minute.

Ms. ZOE LOFGREN of California. Madam Speaker, I think that there is common ground here in the House despite some of the comments we have just met. We all know from the press reports and Admiral McConnell himself that there is a need to make sure that we intercept communications, foreign to foreign, and I think there is 100 percent agreement in this House on that point. I would note that line 18 of the second page of the bill makes that abundantly clear.

We all know that, as technology changes, we need to continually update our laws to make sure that they work well in a changing environment. We have this bill for 120 days if we do, as we know we must, pass it. I think of that 120 days as an assignment for the Congress, so that we understand the technology, so that we can make good decisions.

This is a cell phone. If I bring this cell phone to London and call San Jose, the phone company knows I'm in London and the call is made to San Jose.

Mr. SMITH of Texas. Madam Speaker, I yield 1 minute to the gentleman from Arizona, a member of the Energy and Commerce Committee (Mr. SHADEGG).

Mr. SHADEGG. I thank the gentleman for yielding.

I think the gentlelady is correct. I think intellectually we could come to an agreement.

Sadly, the language of this bill is fatally flawed. Page 3, line 18, the language she refers to is not workable for

reasons that I think both sides understand. It says that no warrant is required when you know that both persons are outside the United States. It is impossible to know that both the person placing the call and the person receiving the call are outside the United States. So section 3 grants no authority whatsoever. You might as well make it blank paper, because it does not give us any authority, even if well-intended.

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Second, the bill, for the first time in the 200-year history of this Nation, says that when our executive branch wants to gather foreign-to-foreign intelligence, it must first go to the judiciary. That is a violation of the Constitution, and it places the duty for protecting American citizens in the hands of unelected judges.

In reality in this Nation, the duty to protect us from enemies foreign and domestic is in the hands of the executive branch.

This legislation is fatally flawed, even if well intended.

Mr. REYES. Madam Speaker, I now would like to yield 45 seconds to the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Madam Speaker, I thank the chairman of the committee for yielding.

One of the characteristics of oppressive governments that we detest is that they spy on their own people. The chilling intrusion into people's lives, effects, and relationships must be controlled even if the government's officers think the intrusion is necessary to preserve safety, security, and order. Indeed, civil protections are necessary, especially if the government officers say they are trying to protect safety, security, and order.

Courts must establish that there is a probable cause to believe an American is a threat to society, and it must be the courts, not the Attorney General, not the Director of National Intelligence, who determine that the standard is met.

The issue here is not about foreign-to-foreign intercepts. It is about how our government treats its citizens.

Mr. SMITH of Texas. Madam Speaker, I yield 2 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), who is a member of both the Judiciary Committee and the Homeland Security Committee.

Mr. DANIEL E. LUNGREN of California. I thank the gentleman for yielding.

Madam Speaker, I am dismayed to hear some suggest that Admiral McConnell would somehow yield to political pressure. This is the gentleman who was the NSA Director under President Clinton. I never heard that argument on that side of the aisle or this side of the aisle. Many of us relied on the intelligence that came through his activity at that point in time. I see nothing in his record, I see nothing in

his performance that would suggest that he would yield to politics.

He has come before us and said, We have tried to work under what is the legal construct that you are repeating in this bill, and it doesn't work. He has said it has denied him the opportunity to do that kind of foreign-to-foreign intelligence gathering because of the way the law is applied and because of the way the judge has interpreted it. And he even told us the judge said, Go to the Congress to change it.

You don't have to be against civil liberties to suggest that we listen to what he has to say. When he talks about the minimization procedure, it is a time-honored procedure we have used for 28 years in this context and for over 50 years in the criminal justice context.

If people will recall, when FISA was first written, it was specifically written to exclude international signals, intelligence activities, and electronic surveillance conducted outside the United States. What we used to grasp technologically then was never under FISA, he has said, because we take it technologically now in a different way. We shouldn't change it, because if we do that, it does not allow us to respond.

And why are we here? He has said openly, and it has appeared in print, because the chatter has increased to levels that are so serious, we need to act now.

Please, please don't deny what he has suggested to us. Let us pass a proper bill that can be effective.

Mr. CONYERS. Madam Speaker, I am pleased to now yield 1 minute to the distinguished member of the Judiciary, Mr. ADAM SCHIFF.

Mr. SCHIFF. Madam Speaker, I thank the gentleman for yielding.

There really is a lot of common ground in this debate. My friends on the minority side of the aisle want to make sure that when one foreigner is talking to another on foreign soil, that doesn't need to go through a FISA court, and we agree.

The only real area of disagreement is when we make an effort to surveil a foreign suspect, and whether inadvertently or advertently we capture the conversations of Americans, should there be court supervision. If the programs expand and, in fact, we capture the conversations of thousands of Americans, should there be some court oversight of that?

I think on a bipartisan basis the Members of this body feel there should be. The courts should be involved, the Congress should be involved when we are talking about the surveillance of Americans on American soil, whether they were the target or the incidental effect of that surveillance. And I also think that if we got three Members from our side of the aisle and three Members from yours and sat down with the admiral, in about an hour, we could hammer this out.

We ought to do supervision when Americans are surveilled. This bill provides that, and I urge its passage.